

Application No. 10/809,768  
Amendment dated January 3, 2007  
Reply to Office action dated October 5, 2006

**Remarks/Arguments:**

Claims 1, 20, 21, 50, 52, 54, and 55 have been amended. No new matter has been added. Following entry of this amendment, the currently pending claims in this application are 1-3, 11-13, 16-22, 24, 26 and 50-55.

In the Amendment filed July 6, 2006, paragraph [0048] of the specification was amended. Applicants wish to clarify at this time that amended paragraph [0048] refers to the paragraph in the published patent application (US 2005/0216008 A1), which corresponds to paragraph [0047] in the originally filed specification.

The Examiner has rejected claim 55 under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The Examiner asserts that the application as originally filed does not provide support for a plate having the claimed relationship of recess width to plate width. Applicants respectfully disagree with the Examiner and draw the Examiner's attention to the originally filed written description, which recites:

“In one embodiment of a straight elongate plate, the elongate portion of the plate (see, e.g., FIGS. 3A, 5, and 6A) may typically be approximately 0.8 mm thick T by 6 mm wide W and have a top surface groove 40 typically measuring about 2.0 mm wide GW... In another embodiment of a straight elongate plate, the elongate portion of the plate...may typically be approximately 1.2 mm thick by 7 mm wide with about a 2.0 mm wide by 0.3 mm deep top surface groove 40.” (paragraph [0057])

Moreover, support for a plate having a width that is roughly three times the width of a recess can be found in the Figures. For example, Figures 3A, 3B, and 5 show plates having recesses that have widths that are a portion of the widths of the plates. In view of the above evidence from the specification as filed, Applicants submit that the application as originally filed does support the limitations of claim 55, and respectfully request the Examiner withdraw the rejection.

The Examiner has also rejected claims 1-3, 11-13, 16, 17, 20-22, 24, 50, and 51 under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 6, 342,055 (“Eisermann”). Applicants contend that the Examiner has misconstrued the disclosure of Eisermann and inappropriately applied this reference as anticipatory to the claims. The Examiner contends that Eisermann discloses a straight elongate bone plate having an elongate concave recess, the elongate concave recess being “the portion on either the left or right side of Figure 1 recessed more than section 26 and curving up to either 20 or 22.” *See* Office Action dated October 5, 2006, p. 3, lines 2-3. The Examiner’s arbitrary

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designation of the portion on either the left or right side of Figure 1 as an elongate concave recess, however, is a misinterpretation of Eisermann and is unsupported by the disclosure of Eisermann. As demonstrated in Figure 9 of Eisermann, which depicts a cross-sectional view of the bone plate 12 along its longitudinal axis, no elongate concave recesses are present on either the left or right sides of plate 12, contrary to the Examiner's assertion. Furthermore, the Examiner has not cited anything from the written description which describes the alleged Examiner's elongate concave recess situated on either the left or right side of the plate 12.

To the contrary, Eisermann discloses a bone fixation plate 12 having fastener holes 18 and stress-controlling ridges 90 that define a wide, continuous surface 92 that extends across the entire length of the plate 12, as clearly shown in Figs. 1, 4, and 9. As clearly shown in the Figures, the surface 92 is significantly wider than fastener holes 18, and spans longitudinally and widthwise virtually the entire top of the plate 12. Eisermann does not disclose a recessed region or a groove having a width measured at the top surface of the plate that is no greater than a diameter of the fastener holes, as relied on by the Examiner. Accordingly, because the claims require a recessed portion with a width no greater than the diameter of a fastener hole, Applicants respectfully submit that the independent claims 1 and 20 are not anticipated by Eisermann, and respectfully request the rejection be withdrawn.

The Examiner has also rejected claims 1-3, 11-13, 16-18, 20, 22, 24, 26, 50, and 51 under 35 U.S.C. 102(b) as being anticipated by U.S. Patent Application Publication No. 2002/0165545 ("Happonen"). As amended, independent claims 1 and 20 now require a recessed area intersecting at least one fastener hole.

Happonen discloses a bone plate 1 having fixation holes 3, shaping areas 6, and edge sections 7. *See* Happonen, paragraphs [0027] and [0028], and Figures 1-5. Happonen does not teach or suggest a recessed region or elongate groove that intersects at least one fastener hole, as now required by the claims. Accordingly, Applicants respectfully submit that independent claims 1 and 20 are not anticipated by Happonen, and respectfully request the rejection be withdrawn.

The Examiner has also rejected claims 18, 19, 26, and 52-55 under 35 U.S.C. 103(a) as being unpatentable over Eisermann in view of U.S. Patent No. 6,093,021 ("Cooper"). As already discussed above, Eisermann does not disclose a recessed region or a groove having a width that is no greater than a diameter of the fastener hole. Cooper does not overcome the deficiencies of Eisermann. Cooper discloses a plate 2 made of bioabsorbable material and having fastener openings 4 extending through an upper surface 3 to a lower surface 5 of the plate 2. *See* Cooper, col. 2, lines 44-48. The

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plate of Cooper also includes protrusions or risers 10 that extend from the lower surface 5 (*i.e.*, bone contacting surface) of the plate 2 which serve to capture and provide a space for the tissue underneath the plate 2 when it is fastened to bone. *See* Cooper, col. 3, lines 5-9. Cooper, however, does not teach or suggest an elongate recessed region or groove recessed in the top surface of the bone plate 2 that extends between and intersects a fastener hole as required by the claims of the present invention. Accordingly, claims 18, 19, 26, and 52-55 are not rendered obvious by the combination of Eisermann and Cooper, and the Applicants respectfully request the Examiner withdraw the rejection.

In view of the foregoing, the Applicant respectfully requests that the Examiner withdraw the rejections and timely issue a Notice of Allowance. Should the Examiner wish to discuss any aspect of this application, the Applicant's attorney suggests a telephonic interview to expedite issuance of a patent.

Respectfully submitted,

ZWIRNMANN ET AL.

3 Jan 2007  
Date

By:

  
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SHAWN C. GLIDDEN  
Registration No. 51,743  
**MORGAN, LEWIS & BOCKIUS LLP**  
1701 Market Street  
Philadelphia, PA 19103-2921  
Telephone: (215) 963-5000  
Direct Dial: (215) 963-5152  
Facsimile: (215) 963-5001  
E-Mail: [sglidden@morganlewis.com](mailto:sglidden@morganlewis.com)  
Attorney for Applicants